

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000293-001 DT

09/21/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

DEANE NOVAK

RONALD K BLAKE

v.

ARIZONA STATE VETERINARY MEDICAL
EXAMINING BOARD (001)
ARIZONA STATE (001)

MARC H HARRIS

OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

Jurisdiction and Standard of Review

This Court has jurisdiction over this case pursuant to A.R.S. § 12-910(e), and this Court is charged with the review of administrative decisions in proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.¹

This administrative review action has been under advisement since the time of oral argument on July 26, 2004. This decision is made within sixty (60) days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and

¹ A.R.S. Section 12-910(e).
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reviewed the record of the proceedings before the Arizona State Veterinary Medical Examining Board and the excellent memoranda and oral arguments submitted by counsel.

The scope of review of an agency determination under administrative review places the burden upon the Plaintiff to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of discretion.² The reviewing court may not substitute its own discretion for that exercised by the agency or Board³, but must only determine if there is any competent evidence to sustain the decision.⁴

Facts

On March 2, 2000, Jill Guittard took her dog to Novak Animal Care Center⁵, which is owned by Plaintiff, Deane Novak, to be euthanized and cremated. Novak Animal Care Center subcontracted with Jeremy Harper (hereinafter "Harper"), a veterinary assistant at Novak Animal Care Center, who independently operated "Forever Friends Cremations," to perform the cremation. Before hiring Harper to perform cremations, Plaintiff stated that he relied on his office manager, Kathy Folkers, to verify the legitimacy of Harper's cremation service. The Board found that Ms. Folkers made a telephone call to a representative of Cerbat Animal Hospital to verify that they had used Harper to perform cremations and had not experienced any problems with his services. Harper's methods of cremating the animals were crude and unprofessional. He would pick up deceased animals from Plaintiff's veterinary clinic and take them to a fire pit area in the desert, and burn them (not all of the animals' carcasses were totally burned) with a weed burning propane torch. Harper would return partial ashes mixed with sand and other debris in the urns.

Ms. Guittard was dissatisfied with the manner in which the cremation was performed and filed a complaint against Plaintiff with the Arizona State Veterinary Medical Examining Board on April 40, 2001. On June 20, 2002 and August 21, 2002, the Board held an informal interview. On August 28, 2002, the Board issued its Findings of Fact, Conclusions of Law and Order. Plaintiff timely filed his Petition for Rehearing, which took place on January 15th, 2003. The board issued its Amended Findings of Fact, Conclusions of Law, and Order on March 3, 2003, finding three instances of unprofessional conduct by Plaintiff:

1. Violation of A.R.S. § 32-2232(3) [misrepresentation of services rendered].

² Klomp v. Ariz. Dept. of Economic Security, 125 Ariz. 556, 611 P.2d 560 (App. 1980); Sundown Imports, Inc. v. Ariz. Dept. of Transportation, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977).

³ Ariz. Dept. of Economic Security v. Lidback, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

⁴ Schade v. Arizona State Retirement, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); Welsh v. Arizona State Board of Accountancy, 14 Ariz. App. 432 P.2d 201 (1971).

⁵ Located in Lake Havasu City, Arizona.

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2. Violation of A.R.S. § 32-2232(12) [violating the ethics of the profession by services rendered].
3. Violation of A.R.S. § 32-2232(12) [violating the ethics of the profession by disrespect and inconsiderate treatment to animal owners and their deceased pets].

The order of the Board placed Plaintiff on probation for six months and ordered him to read and submit a summary to the Board of Chapter 2 of *Law and Ethics of the Veterinary Profession*, by James F. Wilson, D.V.M.,J.D. Plaintiff now brings the matter before this court, having timely filed this administrative review action.

Issues Presented for Review

The first issue raised by the plaintiff is his contention that the Board's findings and conclusions are not supported by the evidence. When reviewing the sufficiency of the evidence, a reviewing court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.⁶ All evidence will be viewed in a light most favorable to sustaining a decision and all reasonable inferences will be resolved against the party appealing the decision.⁷ If conflicts in evidence exist, the reviewing court must resolve such conflicts in favor of sustaining the decision and against the Plaintiff.⁸ When the sufficiency of evidence to support a decision is questioned on review, a reviewing court will examine the record only to determine whether substantial evidence exists to support the action of the administrative agency.⁹ The Arizona Supreme Court has explained in a criminal case (*State v. Tison*)¹⁰ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.¹¹

⁶ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

⁷ *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁸ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁹ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

¹⁰ Supra.

¹¹ *State v. Tison*, at 553, 633 P.2d at 362.

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of employees and subcontractors. This Court has reviewed the record and determines that Plaintiff's actions did in fact violate A.R.S. § 32-2232(12) and R3-11-501(2).

Conclusion

This Court must conclude based upon the record that the Board's actions were supported by substantial evidence, the Plaintiff's actions constituted a misrepresentation of services and the Plaintiff did in fact violate ARS § 32-2232(3), A.R.S. § 32-2232(12) and R3-11-501(2).

IT IS THEREFORE ORDERED denying all relief as requested by the Plaintiff in his complaint.

IT IS FURTHER ORDERED affirming the determinations and decisions of the Defendant, Arizona State Veterinary Medical Examining Board.

IT IS FURTHER ORDERED that counsel for the Defendant Board shall lodge an order consistent with this minute entry no later than October 10, 2004.